



State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
Governor

NOTICE OF PROPOSED RULEMAKING

SUBJECT: eTAR Mandate, DHCS-14-032

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (Department) proposes to adopt California Code of Regulations, title 22, section 51002.5 and amend California Code of Regulations, title 22, section 51003.1 after considering all public comments, objections, and recommendations.

WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice.

Please label any comments as pertaining to eTAR Mandate, DHCS-14-032 and submit using any of the following methods:

Mail Delivery: Department of Health Care Services
Office of Regulations, MS 0015
P.O. Box 997413
Sacramento, CA 95899-7413

Hand Delivery: Department of Health Care Services
Office of Regulations
1501 Capitol Avenue, Suite 5084
Sacramento, CA 95814

FAX: (916) 440-5748

Email: regulations@dhcs.ca.gov

The written comment period closes at **5:00 pm on May 4, 2018**, any written comments, regardless of the method of transmittal must be received by the Office of Regulations by **5:00 pm** on this date for consideration.

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

Authority and Reference

These regulations are being proposed under the following authorities:

Sections 10725 and 14124.5 of the Welfare and Institutions (W&I) Code authorize the Director of the Department to adopt, amend, or repeal regulations as necessary and proper to carry out the purpose and intent of the statutes governing the Medi-Cal program.

These regulations implement, interpret, or make specific the following:

Sections 10725, 14105, 14124.5, 14132.22, 14132.5, 14133, 14133.01 and 14133.05, W&I Code; and Sections 20 and 1267.7, Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department's mission is to provide Californians with access to affordable, integrated, high-quality health care, including medical, dental, mental health, substance use treatment services and long-term care. In support of this mission, the Department administers many health care programs including California's State Medicaid program, which is known as the Medi-Cal program.

The Clinical Assurance and Administrative Support Division (CAASD) provides utilization review and post claims oversight for services provided to Fee-For-Service Medi-Cal beneficiaries (beneficiaries) through its network of medical, pharmacy, and administrative units located throughout the state. CAASD aims to provide cost-effective utilization controls by reviewing and adjudicating Treatment Authorization Requests (TARs) for certain medical procedures, services and drugs for beneficiaries prior to payment for services. CAASD responds to all TAR appeals and designated public hospitals and diagnostic related group disputes submitted by Fee-For-Service Medi-Cal providers (providers).

In September 2014, Senate Bill 1457 amended Section 14133.01 of the W&I Code. This proposed regulatory action implements this legislation by establishing specific requirements that providers must follow regarding the electronic submission of TARs and TAR appeals to the Department. This legislation requires that the Department adopt an electronic system for TAR submissions by July 1, 2017. The Department has already established the Medi-Cal eTAR web portal system (eTAR system), which a majority of these providers are currently using to submit their TARs and TAR appeals.

Anticipated Benefits or Goals of the Regulations

This regulatory proposal supports the purpose and intent of the Medi-Cal program as specified under W&I Code Section 14000, et seq., Chapter 7, Basic Health Care, to afford qualifying individuals (such as the aged or disabled) covered health care services in a manner equitable to the general public and without duplication of benefits available under other federal or state laws.

Within Chapter 7, Section 14124.5 further specifies that the Director may promulgate regulations as are necessary or proper to carry out the purpose and intent of this Chapter, which includes implementation of the uniform schedule of health care benefits under the Medi-Cal program, as described under Section 14131 et seq., including benefits under Article 4 and Section 14021.

The amendments proposed through this regulatory action will benefit providers through the establishment of a clear and streamlined submission process for TARs and TAR appeals through the eTAR system, which in turn will facilitate the delivery of vital health care services to beneficiaries. Use of the eTAR system, instead of the submission of paper TARs and TAR appeals, is also beneficial for providers who experience a reduction in bookkeeping, processing and mailing expenses related to the paper TAR and TAR appeal processes. These providers will also realize an accelerated timeframe for reimbursement.

In addition to meeting the goals of the authorizing statutes, these proposed regulations ensure the proper and efficient administration of the Medi-Cal program in accordance with the federal and state laws that govern the Medi-Cal program's rules of participation, funding and the authorized schedule of benefits. The eTAR system is a modern and streamlined approach to TAR processing that yields administrative and cost efficiencies for providers, the Department and the state.

Consistency and Compatibility with Existing State Regulations

The Department has conducted an evaluation of the related existing state regulations under Title 22 CCR, Division 3 and has determined that the proposed regulations are consistent with and compatible with those regulations. An automated search of Title 22, using the following keywords "TAR", "eTAR", and "Appeal", was conducted via Westlaw and yielded no conflicting state regulations.

Regulatory Sections

This regulatory proposal will accomplish the following:

- Adopt Section 51002.5 to set forth the submission process for eTARs.
- Amend Section 51003.1 to include the provider appeal process for eTARs.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Fiscal Impact Statement

- A. Costs to any Local Agency or School District that is required to be reimbursed Under Part 7 (commencing with Section 17500), Division 4 of the Government Code: None
Costs to any Local Agency or School District that is not reimbursable by the State: None
Some providers are government entities and cost savings to those entities are considered to be minimal but indeterminate. This proposal is expected to create administrative efficiencies for both providers and state administration.
- B. Costs or Savings to any State Agency: Approximately 90% of TARs are currently processed through the eTAR web portal system. The Department expects eTAR usage to continually increase, which is expected to result in indeterminate but minimal savings.
- C. Costs or Savings in Federal Funding to the State: Indeterminate but minimal
- D. Other Nondiscretionary Costs or Savings Including Revenue Changes Imposed on State or Local Agencies: Indeterminate but minimal

All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Mandates on Local Agencies or School Districts

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Participation in the Medi-Cal program is voluntary. The amendments proposed through this regulatory action will only impact providers who participate in the Medi-Cal program and submit TARs and TAR appeals. The majority of providers own and operate computers connected to the internet. This regulatory proposal leverages computing equipment and network access that these providers already have. Providers that do

not have the capacity to electronically submit TARs and TAR appeals may continue to submit paper TARs and TAR appeals. Therefore, no considerable new cost impacts to these entities are presumed to be incurred as a result of adopting the requirements of this proposed regulation.

Significant Statewide Adverse Economic Impact Affecting Businesses

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (Analysis)

In accordance with Government Code Section 11346.3(b)(1), the Department has determined that the proposed regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation or elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.

Impact on Jobs and Businesses

Participation in the Medi-Cal program is voluntary. The amendments proposed through this regulatory action will only impact providers who participate in the Medi-Cal program and submit TARs and TAR appeals. As described under the Local Mandate Determination above the majority of providers own and operate computers connected to the internet. This regulatory proposal leverages computing equipment and network access that these providers already have. Providers that do not have the capacity to electronically submit TARs and TAR appeals may continue to submit paper TARs and TAR appeals. Therefore, it is not anticipated that businesses will experience any cost impacts as a result of this regulatory action. To the contrary, the use of the eTAR system is anticipated to provide some cost savings in bookkeeping, processing and mailing expenses for providers. In addition these providers will also realize an accelerated timeframe for reimbursement. It is not anticipated that providers' use of the eTAR system would have a significant impact on the creation or elimination of jobs, the creation of business, the elimination of existing business or the expansion of businesses in California.

Benefits of the Proposed Regulation

The Department has determined that the proposed regulations will not affect worker safety or the state's environment. However, the proposed regulations will benefit the health and welfare of California residents by supporting the continuity of the Medi-Cal program and the vital services that are offered to qualified individuals through the provision of a modern and streamlined approach for TAR and TAR appeal processing.

This regulatory proposal not only supports an efficient timeframe for reimbursement for these providers, it also ensures the proper and efficient administration of the Medi-Cal program in accordance with federal and state laws. It also provides cost efficiencies for these providers, the Department and the state.

Effect on Small Businesses

The Department has determined that the proposed regulations would only affect those small businesses that choose to participate as providers in the Medi-Cal program and submit TARs and TAR appeals to the Department.

Housing Costs Determination

The Department has made the determination that the proposed regulations would have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Regulations related to the TARs and TAR appeals are located in Title 22, CCR, Chapter 3, Health Care Services. Using this regulatory proposal to make amendments related to TARs and TAR appeals is the most effective method to provide current information to those affected by the regulations in one convenient location (the CCR). This regulatory action is also necessary to meet the mandate in W&I Code Section 14133.01 that the Department promulgate regulations to implement Section 14133.01, and it will promote the accurate and timely submission of TARs and TAR appeals through this eTAR system.

ASSISTIVE SERVICES

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading or writing assistance. To request these assistive services, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email – regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code Section 11346.6.

CONTACT PERSONS

Inquiries regarding the proposed regulations described in this notice may be directed to Desire Kensic of the Clinical Assurance and Administrative Support Division at (415) 463-5765.

All other inquiries concerning the action described in this notice may be directed to David Kim of the Office of Regulations, at (916) 445-1503, or to the designated backup contact person, Jasmin Delacruz, at (916) 440-7695.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

The full text of any regulation which is changed or modified from the express terms of this proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Materials regarding the regulatory action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at:

<http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx>.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.